IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GEORGE MATA, JR.,	)	
Plaintiff,	)	
	)	**CIVIL ACTION**
v.	)	
	)	**No. 01-3424-CM**
	)	
	)	
MICKEY E. RAY, et al.,	)	
Defendants.	)	
	)	

ORDER

Pending before the court are defendants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment (Doc. 35), as well as plaintiff's Motion for Discovery (Doc. 43) and defendants' Motion to Strike Surreply and to Stay Discovery (Doc. 46). For the reasons set forth below, defendants' Motion to Dismiss is granted. Plaintiff's Motion for Discovery, as well as defendant's Motion to Strike Surreply and to Stay Discovery, are denied as moot.

I. Background

Plaintiff, who appears pro se, sued the defendants under 42 U.S.C. § 1983 while he was incarcerated in a community corrections center, or halfway house. Plaintiff was formerly housed at the United States Penitentiary at Leavenworth, Kansas. Plaintiff alleges that the defendants, as Bureau of Prisons employees, conspired to violate plaintiff's rights under the Fifth and Eighth Amendments, as well as under certain regulatory and institutional provisions, by detaining plaintiff in the institution's Special Housing Unit (SHU) beyond the completion of his sanctions in disciplinary segregation.

Plaintiff was placed in administrative detention on March 14, 2000, pending an investigation of plaintiff's possession of a weapon. Plaintiff received an incident report regarding this investigation the same day. On April 24, 2000, plaintiff appeared before the Discipline Hearing Officer and was found to have committed the prohibited act of possession of a weapon. As a result, plaintiff was sanctioned to 30 days disciplinary segregation.

During this time period, the Special Investigation Supervisor (SIS) began an investigation which included plaintiff's possible involvement in illegal activity within the institution. Plaintiff completed his sanctioned segregation on May 24, 2000, but remained in the SHU pending the outcome of the SIS investigation. Based on information gathered during this investigation, institution staff began taking steps to place plaintiff in the Central Inmate Monitoring System (CIM) for separation needs. The Bureau of Prisons monitors and controls the transfer, temporary release, and community activities of certain inmates who present special management needs. These inmates are known as CIM cases.

An inmate with a CIM assignment of separation may not be confined to the same institution with other specific individuals who are presently in federal custody or who may come into federal custody in the future, unless the institution has the ability to prevent any physical contact between the separated inmates. Although CIM inmates are notified of their CIM status, they are not notified of the names of individuals from whom they are separated.

Plaintiff was notified on August 23, 2000, that he was a CIM case with a classification of separation. On August 30, 2000, SIS completed the investigation and determined that plaintiff's separation needs made it impossible to release him into the general population. Institution staff began evaluating options for an appropriate detention facility for plaintiff. Based on the fact that plaintiff's release date was approaching, and based on

plaintiff's disciplinary record, the staff determined that plaintiff should not be transferred to another facility.[1] In June 2001, the staff began the process of transferring plaintiff to a halfway house. On October 18, 2001, plaintiff was released from the penitentiary at Leavenworth to a halfway house.[2] Plaintiff was released from the halfway house on April 5, 2002.

Plaintiff also alleges that, on or about August 1, 2001, defendant G. Maldonado warned plaintiff that defendant Maldonado would not recommend that plaintiff be sent to a halfway house unless plaintiff withdrew his pending administrative appeal. In June of 2001, however, prior to defendant Maldonado's alleged statement, defendant Maldonado helped process a request for plaintiff's placement in a halfway house.

II. Dismissal Under Rule 12

When a plaintiff proceeds pro se, the court construes his or her pleadings liberally and holds the pleadings to a less stringent standard than formal pleadings drafted by attorneys. *McBride v. Deer,* 240 F.3d 1287, 1290 (10th Cir. 2001). The liberal construction of the plaintiff's complaint, however, "does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based," and "conclusory allegations without supporting factual averments are insufficient to state a claim on which relief can be based." *Id*.

The court will dismiss a cause of action for failure to state a claim only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his [or her] claims which would entitle him [or her] to relief," *Poole v. County of Otero*, 271 F.3d 955, 957 (10th Cir. 2001) (citations omitted), or when an issue of law is dispositive." *Nietzke v. Williams*, 490 U.S. 319, 326 (1989). The court accepts as true all well-

[1]Defendants have submitted certain sensitive documents, which the court has reviewed *in camera*, that explain the reasons for this conclusion.

[2]On the next day, plaintiff filed the instant lawsuit.

pleaded facts, as distinguished from conclusory allegations, and views all inferences from those facts in favor of the plaintiff. *Smith v. Plati*, 258 F.3d 1167, 1174 (10th Cir. 2001). The issue in resolving a motion such as this is not whether the plaintiff will ultimately prevail, but whether he or she is entitled to offer evidence to support the claims. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds*, *Davis v. Scherer*, 468 U.S. 183 (1984).

III. Exhaustion of Remedies Under the PLRA

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "available" administrative remedies be exhausted prior to filing an action with respect to prison conditions under § 1983. A prisoner must exhaust the administrative remedies available, even where those remedies would appear to be futile. *Jernigan v. Stuchell*, 304 F.3d 1030, 1032 (10th Cir. 2002) (citations omitted).

"An inmate who begins the grievance process but does not complete it is barred from pursuing a § 1983 claim under PLRA for failure to exhaust his administrative remedies." *Id*. The "doctrine of substantial compliance does not apply" to cases arising under PLRA. *Id*. The uncontroverted evidence before the court shows that plaintiff did pursue his administrative remedies through to the Central Office appeal level, but only regarding his claim that he was detained in the SHU. Plaintiff's complaint regarding his SHU detention was remanded to the institution for reevaluation. At that time, the Central Office told plaintiff he could appeal if he was not satisfied with the outcome of that reevaluation. When defendant Mickey Ray advised plaintiff of the outcome of his Administrative Remedy Appeal, he again advised plaintiff that plaintiff could reinstate his appeal through the administrative remedy process. Plaintiff has not alleged, nor is there any factual support in the record upon which the court may conclude, that plaintiff reinstated his appeal through the administrative process. The court finds, therefore, that plaintiff did not exhaust his administrative remedies regarding this claim.

The record also reflects that plaintiff took no steps to pursue the administrative grievance process regarding defendant Maldonado's alleged activity. Therefore, the court also finds that plaintiff did not exhaust his administrative remedies regarding this claim.

Because the court has determined that plaintiff did not exhaust his administrative remedies, and because the exhaustion requirement is a dispositive issue of law, the court concludes that plaintiff is barred from pursuing this § 1983 action. Plaintiff's cause of action is, therefore, dismissed.

Finally, because the court is dismissing plaintiff's claims, the court concludes that any pending motions regarding discovery or the propriety of plaintiff's surreply are moot.

IT IS THEREFORE ORDERED that plaintiff's Motion to Dismiss (Doc. 35) is granted.

IT IS FURTHER ORDERED that plaintiff's Motion for Discovery (Doc. 43) and defendants' Motion to Strike Surreply and to Stay Discovery (Doc. 46) are denied as moot.

Dated this 7th day of August 2003, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge